

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

JOSHUA A. WILSON, *et al.*,

Plaintiffs,

v.

LLOYD J. AUSTIN III, *et al.*,

Defendants.

Case No. 4:22-cv-00438-ALM

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants respectfully notify the Court of several recent decisions relevant to Defendants' pending motion to dismiss, ECF No. 45.

In *U.S. Navy SEALs 1–26 v. Biden*, Nos. 22-10077, 22-10534, 2023 WL 4362355 (5th Cir. July 6, 2023), the Fifth Circuit held that the military's rescission of the COVID-19 vaccination requirement mooted the government's appeal from class-wide and individual preliminary injunctions against enforcement of the vaccination requirement.

In *Robert v. Austin*, No. 22-1032, 2023 WL 4361082 (10th Cir. July 6, 2023), the Tenth Circuit held that the plaintiffs' appeal from the dismissal of their challenge to the military's COVID-19 vaccination requirement was moot, both because the plaintiffs had left military service over the course of the appeal and because the military had rescinded that vaccination requirement.

In *Davis v. Austin*, No. 3:22-cv-237, 2023 WL 4352444 (M.D. Fla. July 5, 2023), and *Bongiovanni v. Austin*, No. 3:22-cv-580, 2023 WL 4352445 (M.D. Fla. July 5, 2023), the U.S. District Court for the Middle District of Florida dismissed as moot challenges to the military's COVID-19 vaccination requirement in light of the requirement's rescission.

These decisions provide additional authority in support of Defendants' motion to dismiss.

Dated: July 18, 2023

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

ALEXANDER K. HAAS
Director, Federal Programs Branch

JOSHUA E. GARDNER
Special Counsel

/s/ Jody D. Lowenstein
JODY D. LOWENSTEIN
Mont. Bar No. 55816869
ZACHARY A. AVALLONE
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005
Phone: (202) 598-9280
Email: jody.d.lowenstein@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2023, I electronically filed the foregoing document with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of such filing.

/s/ Jody D. Lowenstein
JODY D. LOWENSTEIN
Trial Attorney
U.S. Department of Justice